

JOHN S. FLEMING

IBLA 81-557

Decided July 20, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim null and void. C MC 21077.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Lands -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: John S. Fleming, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated March 19, 1981, by the California State Office, Bureau of Land Management (BLM), declaring the Fleming #1 lode mining claim null and void for the stated reason that the claim was located on previously withdrawn land.

Appellant's notice of location states that the claim was located on November 6, 1978, and describes it as being situated in the NW 1/4 of sec. 32, T. 2 N., R. 8 W., San Bernardino meridian.

The file contains a letter dated March 2, 1981, to BLM from the District Ranger, U.S. Department of Agriculture. The letter states in pertinent part as follows:

The claimant has mistakenly reopened an abandoned shaft in T. 1 N., R. 9 W., sec. 2, apparently thinking this was the site on which he had filed. We find no record of filing on the later site.

Please be advised that both sections are withdrawn from mineral entry under the 1928 Watershed Withdrawal Act.

The decision appealed from declared the claim null and void ab initio, because the lands in question had been withdrawn pursuant to the Act of May 29, 1928, 45 Stat. 956.

In the statement of reasons appellant refers to his notice of location wherein he had described the claim as being in proximity of the Glendora Ridge Road. Appellant suggests that whoever made the on the ground field examination could be wrong.

[1] Mining claims may only be located on lands open to the operation of the United States mining law, 30 U.S.C. § 22 (1976). Thus, mining claims located on land previously withdrawn from mineral entry are null and void ab initio. Floyd E. Benton, 62 IBLA 243 (1982); Clayton S. Hale, 62 IBLA 35 (1982); Sherman C. Smith, 58 IBLA 188 (1981). Since the record clearly shows that the two sections in question were not open to mineral entry, BLM properly declared appellant's claim null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

